



I assent,

TAUFA'AHAU TUPOU IV

27th February, 2001.

## AN ACT

TO PROHIBIT ADVERTISING AND PROMOTION OF CIGARETTES AND OTHER TOBACCO PRODUCTS, TO REGULATE THE LABELLING OF TOBACCO PRODUCT CONTAINERS, TO RESTRICT THE NICOTINE AND TAR CONTENT OF CIGARETTES, TO PROHIBIT THE SALE OF TOBACCO PRODUCTS TO YOUNG PEOPLE, TO RESTRICT SMOKING IN PUBLIC PLACES AND ON PUBLIC TRANSPORT, AND FOR ANCILLARY PURPOSES.

[2nd October, 2000]

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:-

### Part I – PRELIMINARY

1. This Act may be cited as the Tobacco Control Act 2000, and shall come into force on a day to be proclaimed by His Majesty in Council. Short title.

2. In this Act, unless the context otherwise requires-

Interpretation.

"*amusement centre*" means any building, structure, or any other such place, whether temporary or permanent and whether partially or completely enclosed, in or at which public amusement takes place and to which the public are admitted with or without payment;

"*authorised officer*" means a police officer or a person prescribed under section 14;

"*cigarette*" means any product which –

(a) consist wholly or partly of cut, shredded or manufactured tobacco, or of any tobacco derivative or substitute, rolled up in a single wrap of paper; and

(b) is capable of being immediately used for smoking;

*"clinic"* means any building used or intended to be used by a medical practitioner, dental practitioner or any other person for the diagnosis or treatment of persons suffering from, or believed to be suffering from, any disease and includes any such place operated by the Government;

*"container"* includes a box, tin, packet, or carton but does not include any outer wrapper, cellophane or other transparent material;

*"hospital"* means any building in which 2 or more patients are or may be maintained at the same time and includes any such place operated by the Government;

*"Minister"* means the Minister of Health;

*"office"* means a place in which a person is employed, directly or indirectly to do any clerical, administrative or professional work in connection with any business-carried on by the occupier of that place;

*"public amusement"* means any game any kind whatsoever provided for the public in which a member or members of the public may take part;

*"restaurant"* means any place or any part thereof, where the principal business is the serving of meals or refreshments to the public for consumption at such place, and includes any such room or area on a watercraft;

*"sell"* includes-

- (a) barter or exchange;
- (b) offer or expose for sale, barter or exchange;
- (c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; and
- (d) supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain;

*"smoke-free zone"* means the area designated as a smoke-free zone under section 12;

*"smoking"* with its grammatical variations, means puffing or inhaling and expelling the smoke of any tobacco product and includes the holding of, or control over, any ignited tobacco product;

*"sports stand"* means any building or structure, whether temporary or permanent, which is partially or completely enclosed and which is used for the seating of members of the public, with or without payment, primarily to view any sporting contest, but does not include any such building or structure belonging to any club, association, institution or other body intended for the benefit primarily of its members;

*"tar"* means the Condensate Particulate Matter (CPM) which results from the ignition of any tobacco product;

*"tobacco"* means any product obtained from the leaf of the *Nicotiana tobacum* plant or other related plants;

*"tobacco product"* means any tobacco or cigarette or any other product the main ingredient of which is tobacco and which is designed for human consumption by any manner;

*"tobacco product advertisement"* means any words, whether written, printed, spoken, broadcast or telecast, including on film, video recording or other medium, and any pictorial representation, design, device, visual image, sign, symbol, trademark, brand name or company name, or part of a trademark, brand or company name, or a combination of 2 or more of the foregoing, used to encourage the use or to notify the availability or to promote the sale of any tobacco product or to promote smoking;

*"vending machine"* means a machine or device that is constructed to contain tobacco products and which can automatically retail any tobacco product upon the insertion of a coin, token or similar object into the machine or device;

*"watercraft"* means any vessel designed to float on water, whether or not it is suitable, adapted or used for transportation;

*"workplace"* means any indoor or enclosed area that is occupied by an employer and that employees usually frequent during the course of their employment; and includes any cafeteria, corridor, lift, lobby, stairwell, toilet, and washroom; and also includes any enclosed common areas and employer-provided vehicles normally used by employees; but does not include any place of residence occupied by the employer or any employee.

## Part II - PROHIBITION OF ADVERTISING AND PROMOTION OF TOBACCO PRODUCTS

### 3. (1) Any person who -

- (a) displays, exhibits, announces, broadcasts or telecasts, or causes or permits to be displayed, exhibited, announced, broadcast, or telecast or authorises the display, exhibition, announcement, broadcast or telecast to the public of, a tobacco product advertisement;
- (b) sells or distributes, or causes or permits to be sold or distributed, or authorises the sale of, any film or video tape, that contain a tobacco product advertisement;
- (c) distributes, or causes permits to be distributed, or authorises the distribution, to the public of any leaflet or document that is a tobacco product advertisement; or
- (d) prints or publishes, or causes or permits to be printed or published, or authorises the printing or publication, of a tobacco product advertisement in any printed publication, book, magazine, leaflet, handbill, newspaper or other printed matter intended for the public;

Prohibition of tobacco product advertisements.

commits an offence.

(2) Subsection (1) does not apply to -

- (a) a tobacco product advertisement in or on a container containing a tobacco product;
- (b) any tobacco product advertisement included in any book, magazine, or newspaper printed outside the Kingdom, or in any radio or television transmission originating outside the Kingdom, or any film or video recording made outside, unless-
  - (i) the principal purpose of the book, magazine, newspaper, broadcast, telecast, film, or video recording is the promotion of the use of a tobacco product;
  - (ii) the book, magazine, newspaper, film, or video recording is intended for sale, distribution, or exhibition primarily in the Kingdom; or
  - (iii) in the case of a tobacco product advertisement in any radio or television transmission, the advertisement is targeted primarily at a Tongan audience.

Prohibition on giving of or distributing of free samples.

Prohibition on sponsorship.

4. Any person who, for the purpose of inducing or promoting the sale of any tobacco product, offers, gives or distributes to any person a free sample the tobacco product, commits an offence.

5. (1) Any person who, under a contract, agreement, undertaking or understanding, whether or not legally binding, with another person, promotes or publicises, or agrees to promote or publicise -

- (a) a tobacco product or a trademark or brand name, or part of a trademark or brand name, of a tobacco product; or
- (b) the name or interests of a manufacturer or distributor of a tobacco product (whether or not that manufacturer or distributor also manufactures or distributes a product other than the tobacco product) in association directly or indirectly with the tobacco product,

in exchange for a sponsorship, gift, prize, reward, scholarship or like benefit given or agreed to be given by another person, commits an offence.

(2) Any person who, under a contract, agreement, undertaking or understanding with another person, whether or not legally binding, gives or agrees to give any sponsorship, gift, prize, scholarship or like benefit in exchange for the promotion of, or an agreement to promote, a tobacco product or a name, interest, trademark or brand name of a tobacco product, commits an offence.

### Part III - LABELLING OF TOBACCO PRODUCT CONTAINERS

Obligation to print health warnings etc.

6. (1) There shall be clearly printed or otherwise marked in English or Tongan on every container of a tobacco product sold in the course of any trade or business a health warning that -

- (a) smoking harms unborn babies;
  - (b) smoking causes cancer;
  - (c) smoking causes heart disease; or
  - (d) any similar warning that smoking is detrimental to health.
- (2) If the health warning appears on a label, the label must be securely affixed to the container.
- (3) Any person who sells any tobacco product which is not labelled or marked in accordance with this section, commits an offence.
7. (1) There shall be clearly printed or otherwise marked on every cigarette container a statement of the level or maximum level of tar and nicotine in milligrams per cigarette in the container. Obligation to print tar and nicotine content.
- (2) Any person who sells any cigarette -
- (a) in any container which is not marked in accordance with subsection (1); or
  - (b) which contains tar or nicotine in excess of the level stated on the container;
- commits an offence.

#### **Part IV - RESTRICTIONS ON TAR AND NICOTINE CONTENT**

8. (1) The level of tar in any cigarette shall not exceed 15 milligrams and the level of nicotine shall not exceed 1.5 milligrams. Restrictions on tar and nicotine content.
- (2) Any person who sells any cigarette which contains tar or nicotine in excess of the maximum level prescribed by subsection (1) commits an offence.

#### **Part V - RESTRICTIONS ON SALE AND SMOKING OF TOBACCO PRODUCTS**

9. (1) Any person who -
- (a) sells or supplies any tobacco product to a person under the age of 18 years;
  - (b) purchases a tobacco product for the use of a person under the age of 18 years; or
  - (c) allows a person under the age of 18 years to purchase a tobacco product from a vending machine situated on premises occupied by the first mentioned person;
- commits an offence.
- (2) It is a defence to a prosecution under this section if a person proves that he -
- Prohibition on supplying tobacco to persons under 18 years

- (a) had reasonable cause to believe that the person purchasing the tobacco product, or for whom the tobacco product was purchased, or to whom the tobacco product was supplied, was not under the age of 18 years; or
  - (b) had taken all reasonable precautions to ensure that the tobacco product was not sold to a person under the age of 18 years.
- (3) A person who contravenes subsection (1) is liable upon conviction to a fine not exceeding \$1,000.

Vending  
machines.

10. (1) Any person who places, or causes or permits to be placed, a vending machine for tobacco products for use by members of the public in any place to which persons under the age of 18 are allowed access commits an offence.
- (2) A person who contravenes subsection (1) is liable upon conviction to a fine not exceeding \$1,000.

Prohibition on  
smoking in  
certain public  
places.

11. (1) Any person who smokes in any –
- (a) amusement centre, theatre or sports stand at any time when such place is open to the public;
  - (b) hospital or clinic;
  - (c) school (including school grounds) during school hours;
  - (d) public transportation at any time when it is carrying fare-paying passengers, except in designated smoking sections on an aircraft during an international flight or on a ship;
  - (e) airport terminal building;
  - (f) building prescribed under section 13;
  - (g) office;
  - (h) workplace; or
  - (i) smoke-free zone in a licensed premises or restaurant;
- commits an offence.
- (2) A person who contravenes subsection (1) is liable upon conviction to a fine not exceeding \$500.
- (3) The occupier and the person in charge of any place referred to in subsection (1) shall ensure that –
- (a) no person smokes; and
  - (b) a 'no smoking' sign in English and Tongan is clearly displayed, in that place.
- (4) A person who contravenes subsection (3) is liable upon conviction to a fine not exceeding \$1,000.

12. (1) The proprietor of every licensed premises or restaurant must designate not less than one half of the area of the licensed premises or restaurant available for the use of the public as an area in which smoking is prohibited, to be known as a smoke-free zone. Designation of smoke-free zone in licensed premises or restaurants.
- (2) The proprietor and the person in charge of every licensed premises or restaurant shall ensure that –
- (a) a smoke-free zone, is, so far as is reasonably practicable, separated from areas where smoking is permitted;
- (b) a smoke free-zone is ventilated.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable upon conviction to a fine not exceeding \$1,000.
- (4) Nothing in this section is to be taken as preventing the proprietor or person in charge of any licensed premises or restaurant from prohibiting smoking in all areas in the licensed premises or restaurant.

13. The Minister may, by notice and subject to any conditions he thinks fit, prescribe any building or class of buildings or any part thereof to which members of the public have access to be a smoke free zone places in which as a smoke free zone or smoking is prohibited a smoke free zone place or places in which is prohibited either permanently or for any period he thinks fit. Minister may prescribe smoke-free buildings.

#### Part VI - MISCELLANEOUS

14. (1) The Minister may, by notice in the Gazette, prescribe any person or persons of a specified class or description other than police officers as authorised officers for the purposes of this Act. Authorised officer.
- (2) An authorised officer shall, upon request, provide identification that he is an authorised officer.
15. A person who contravenes or fails to comply with any provision of this Act creating an offence is liable upon conviction, where there is no penalty provided, to a fine not exceeding the following: Offences and penalties.
- (a) in the case of an individual, \$2,000 for a first offence and \$5,000 for a second or subsequent offence;
- (b) in the case of a body corporate \$5,000 for a first offence and \$10,000 for a second or subsequent offence.
16. If a body corporate commits an offence against this Act, each director or other person concerned in the management of the body corporate is also guilty of, and liable to the penalty provided for that offence unless the director or other person proves that he exercised reasonable diligence to prevent the commission of the offence. Offences by corporate bodies.
17. (1) Prosecutions for an offence under this Act may be brought – Prosecutions.
- (a) by or on behalf of the Attorney General;
- (b) by a member of the police; or
- (c) by an authorised officer

- (2) A person referred to in subsection (1)(b) or (c), whether or not a legal practitioner, may lay, institute or conduct any charge, information, complaint or other proceeding arising under this Act, subject to any directions issued by the Attorney General.
- Powers of entry, search and seizure.** 18. (1) For the purposes of this Act, an authorised officer may at all reasonable times –
- (a) enter any premises he knows or reasonably suspects –
    - (i) are being used for the production, manufacture, assembly, preparation, storage or sale of any tobacco product, tobacco product container or tobacco product advertisement; and
    - (ii) have been or are being or are likely to be used by any person in connection with a contravention of this Act;
  - (b) enter any premises where he knows or reasonably suspects that records are kept relating to the sale or manufacture of tobacco products or to tobacco product advertisements contravention of this Act;
  - (c) enter any premises which he knows or reasonably suspects are being used by any person for the printing, or as an office in connection with the printing, of any newspaper or other publication or for the manufacture or distribution of any videotape, which contravenes this Act;
  - (d) enter any broadcasting or television station which he knows or reasonably suspects is associated with any contravention of this Act;
  - (e) in any premises entered by him –
    - (i) search for, examine, take possession of or make copies of or extracts from records relating to any tobacco product or tobacco product advertisement or container supplied or to be supplied or relating to any matter the subject of an investigation under this Act;
    - (ii) search for and examine goods found thereon;
    - (iii) seize any tobacco product or tobacco product advertisement or container without payment;
    - (iv) seize without payment any brochures, leaflets, books, writing, documents or other materials that he knows or reasonably suspects have been, are being, or are likely to be used to advertise, promote, publicise or package any tobacco product in contravention of this Act;
    - (v) open any room, place, container or package that he knows or reasonably suspects contains any tobacco product or tobacco product advertisement;
    - (vi) question with respect to matters under this Act any person he finds thereon;

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- (f) make such inquiry and examination as he believes to be necessary or desirable to assist the discharge or exercise of any function or power under this Act or to ascertain whether any contravention of this Act has been, is being or is likely to be committed.
- (2) Subsection (1) does not authorise forcible entry by an authorised officer to any premises except under the authority of a warrant obtained pursuant to subsection (3).
- (3) A Magistrate, if satisfied upon the information of an authorised officer that there is reasonable cause to suspect that any place has been or is being or is likely to be used in connection with a contravention of this Act or for the keeping of records relating to a contravention of this Act, may issue a search warrant directing the authorised officer to enter the place specified in the search warrant for the purpose of exercising the powers conferred on an authorised officer by this Act.
- (4) For the purpose of gaining entry to any place an authorised officer may call in aid such persons as he considers necessary.
- (5) A search warrant issued under this section is, for a period of one month from its issue, sufficient authority –
- (a) to the authorised officer to whom it is directed and to all persons acting in aid of the officer to enter the place specified in the search warrant; and
- (b) to the authorised officer to whom it is directed to exercise in respect of the place specified in the search warrant all the powers conferred on an authorised officer by this Act.
- (6) If an authorised officer has taken possession of records or of other property for the purposes of this Act he may –
- (a) in the case of records, retain them for as long as necessary for those purposes but the person otherwise entitled to possession of the records, if he so requests, is entitled to be furnished as soon as practicable with a copy certified by the authorised officer to be a true copy and such a certified copy must be received in all courts and elsewhere as evidence of the matters contained in it as if it were the original;
- (b) in the case of other property subject to this Act, retain the property for as long as is necessary for those purposes, and thereafter dispose of it as the Court directs.
19. (1) Where an authorised officer has reasonable cause to suspect that any person has information or records in his possession which may be relevant to the operation or enforcement of this Act or to the investigation of a suspected contravention of this Act, he may require that person (either by oral or written requisition) to furnish –
- Power to obtain information.

- (a) any information;
  - (b) any records or a copy thereof;
- in the person's possession.
- (2) For the purpose of subsection (1), a person shall be taken to be in possession of –
- (a) information, if the person has the information or is entitled to access to the information;
  - (b) records, if the person has them in his possession or under his control in any place, whether for his own use or benefit or for another's use or benefit and although another person has the actual possession or custody of the records.
- (3) A requisition made under subsection (1) may require that the information or records or copy thereof be furnished –
- (a) to the authorised officer or another authorised officer or to an officer of a specified department of the Government;
  - (b) at the place the requisition is made or at another place;
  - (c) forthwith or at, by or within a time specified;
  - (d) in person, or by registered mail or in another manner specified;
  - (e) by means of, or accompanied by, verification in the form of an affidavit;
  - (f) in the case of information, orally or in writing.
- (4) A person shall not without reasonable cause –
- (a) refuse or fail to furnish any information, records or copy as required under this section;
  - (b) in response to a requisition made under this section furnish information, records or copies that is or are false or misleading in a material particular.
- (5) A person shall not refuse to furnish any information, records or copy on the ground that its contents may incriminate him, but if a person, at the time he supplies any information, records or copy states in writing that the information, records or copy is, or may be, incriminating of him, the information, records or copy shall not be used in any proceedings against that person for an offence against this Act.
- (6) If a person records or stores any matter by means of a mechanical, electronic or other device, the duty imposed by this section to produce any records containing those matters shall include a duty to produce the matters in written form if that is demanded.
- (7) Any person required to produce a copy of any records under this section shall produce a clear reproduction of the records.

(8) An authorised officer may take notes or copies of or extracts from records or a copy of any records produced under this section.

(9) Any person who without reasonable cause –

(a) fails to furnish information, records or copies required under this section; or

(b) furnishes in response to a requisition under this section information, records or copies that is or are false or misleading in a material particular,

commits an offence.

20. If a person commits an offence by failing to furnish information required under section 19 or to produce any records or a copy of any records – Continuing offence.

(a) the obligation to furnish the information or produce the records or a copy of them, as the case may be, continues until the person complies with the requirement notwithstanding that in a particular case a time was specified at, by or within which compliance was required and that time has passed;

(b) the person commits a continuing offence in respect of each day after the day of conviction during which the failure to comply with the requisition continues;

(c) the person is liable to a fine of \$100 for each day during which the offence continues; and

(d) the person may be prosecuted from time to time in respect of continuing offence under paragraph (b).

21. (1) A person shall not obstruct an authorised officer in the exercise of his powers under this Act. Obstruction.

(2) For the purposes of this Act, a person obstructs an authorised officer in the exercise of his powers under this Act if he –

(a) assaults, abuses, intimidates or insults the authorised officer or any other person assisting the authorised officer in the exercise of his powers under this Act;

(b) directly or indirectly prevents or attempts to prevent any person from being questioned by an authorised officer or from furnishing under this Act any information or records or copies; or

(c) in any other way obstructs or attempts to obstruct an authorised officer in the exercise of his powers under this Act.

22. (1) If –

(a) any tobacco product, container, label, tobacco product advertisement, licenced premises, restaurants, smoke-free building, smoke-free area, or other place or thing does not comply with the provisions of this Act; or

*Directions may be issued to secure compliance.*

- (b) any provision of this Act has not been complied with in relation to any of the aforementioned.

an authorised officer may, in writing, direct any person who has contravened the provision by such non-compliance to take, within a specified time not exceeding 14 days, such steps as may be specified to prevent any further contravention and to remedy the matters in respect of which the non-compliance has occurred.

- (2) The issue of a direction under this section does not affect any proceeding under this Act which has been or may be taken for the non-compliance which gave rise to the direction.
- (3) A person to whom a direction is issued under this section and who does not comply with the direction commits an offence.

Removal of  
advertisements  
and destruction  
of tobacco  
products.

23. (1) If a person is convicted of an offence under section 3, the Court, in addition to any other penalty, may order –
- (a) that any advertisement be removed or obscured or destroyed by an authorised officer; and
- (b) that the person convicted shall pay the reasonable costs incurred by the authorised officer in removing or obscuring or destroying any advertisement.
- (2) If a person is convicted of an offence under section 6, 7 or 8 the Court, in addition to any other penalty, may order –
- (a) that the tobacco product be confiscated and destroyed by an authorised officer; and
- (b) that the person convicted shall pay the reasonable costs incurred by an authorised officer in confiscating and destroying the tobacco product.
- (3) Costs payable under subsection (1) or (2) may be recovered in the same way as a fine.

Contracts etc.  
void.

24. (1) A contract, agreement, undertaking or understanding which is in effect when this Act comes into force is void to the extent to which it is inconsistent with this Act.
- (2) Neither the Crown nor any person is liable to pay any damages or other compensation to any other person in consequence of subsection (1).

Regulations.

25. The Minister may with the consent of Cabinet, make regulations, not inconsistent with this Act, prescribing matters necessary or convenient to be made for carrying out or giving effect to this Act.